

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LAVELLE SEARCY (#195469),
KENNETH WITHERSPOON,
WILLIAM JOHNSON (#239323)
SHANNON SEXTON (#197754), and
JAMES HOLLAND,

Plaintiffs,

v.

Case No. 2:10-CV-11242
Honorable Denise Page Hood

MACOMB COUNTY JAIL,
MARK A. HACKEL,
ARAMARK CORPORATION,
CORRECTIONAL MEDICAL SERVICES, INC.,
and VALERIE WATKINS,

Defendants.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND
DENYING WITHOUT PREJUDICE DEFENDANT'S MOTION TO DISMISS AND
PLAINTIFF'S MOTION TO CERTIFY CLASS**

I. INTRODUCTION

This matter is before the Court on Magistrate Judge Paul J. Komives's Report and Recommendation ("R&R"), dated May August 12, 2011. **Docket No. 94.** On December 27, 2010, Defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). **Docket No. 46.** Plaintiff filed a Motion for Class Action Certification on January 6, 2011. **Docket No. 47.** On August 29, 2011, Defendants filed Objections to the R&R. **Docket. No. 97.** Plaintiff did not file any Objections.

II. STANDARD OF REVIEW

When examining a Magistrate's Report and Recommendation, 28 U.S.C. § 636 governs the standard of review. This Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*

III. ANALYSIS

The R&R recommends that this Court deny Defendant's motion to dismiss without prejudice to allow Plaintiff time to file an amended complaint. The R&R further recommends that this Court deny without prejudice Plaintiff's motion to certify class.

Defendant Correctional Medical Services makes three objections to the Magistrate's recommendation. First, this action has been pending for over one and a half years and there has been undue delay in correcting the complaint. Second, Plaintiff has already been allowed by this Court to amend its complaint and has failed to cure the complaint's deficiencies. Finally, Defendant contends that Plaintiff does not have a claim upon which relief can be granted.

This Court accepts and adopts the Magistrate's analysis and recommendation. Federal Rule of Civil Procedure 15(a)(2) allows this Court to freely give leave to a party to amend its pleadings. Plaintiff has attempted to provide a more definite statement in its response to Defendant's Motion to Dismiss, but these statements are not part of the complaint. This Court will allow Plaintiff another opportunity to file an amended complaint with a more definite statement that complies with Federal Rules of Civil Procedure 8 and 10. As stated by the Magistrate, this Court puts Plaintiff on notice of the following: (1) E.D. Mich. L.R. 15.1 provides that the amended complaint will supersede any previously filed complaint so Plaintiff must set out all grounds for relief without reference to any previous complaint; (2) the amended

complaint must specify which claims are against which defendants and describe the cause of action that supports each claim; and (3) the amended complaint will be subject to a Fed. R. Civ. P. 12(e) motion for a more definite statement or a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted.

This Court also accepts and adopts the Magistrate's analysis and recommendation to deny without prejudice Plaintiff's Motion to Certify Class.

IT IS ORDERED that the Defendant Correctional Medical Service's Motion to Dismiss [Docket No. 46, filed December 27, 2010] is **DENIED** without prejudice.

IT IS FURTHER ORDERED that Plaintiff must file an amended complaint within twenty-one (21) days of the date of this Order.

IT IS FURTHER ORDERED that Plaintiff's Motion to Certify Class [Docket No. 47, filed January 6, 2011] is **DENIED** without prejudice.

s/Denise Page Hood
United States District Judge

Dated: September 20, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 20, 2011, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager